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**Attorney(s) for Plaintiff Norman Kornitzer**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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**NORMAN KORNITZER,**

**Plaintiff(s),**

**vs.**

**NEW JERSEY SPINE INSTITUTE;  
LOUIS QUARTARARO, M.D.;  
MEDTRONIC, INC.; XYZ, CORP.,  
ABC, INC., and JOHN AND JANE  
DOES 1-25,**

**Defendant(s).**

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CIVIL ACTION NO: **2:12-cv-07090-SRC-CLW**

**FIRST AMENDED COMPLAINT  
AND JURY DEMAND**

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Plaintiff Norman Kornitzer, residing at 181 Meadow Ridge Acres Road, Milford, PA 18337, by way of Complaint against the Defendants, does say:

**PARTIES**

1. Plaintiff is an individual who resides in Milford, Pennsylvania.
2. Upon information and belief, Defendant New Jersey Spine Institute maintains an office located at: 1 West Ridgewood Avenue, Suite 303, Paramus, New Jersey, where Defendant Louis Quartararo practices medicine as a duly licensed physician, under

the laws of the State of New Jersey. Dr. Quartararo held himself out to Plaintiff, as being skilled, careful and diligent in the practice of his profession as an orthopedic surgeon.

3. Upon information and belief, Defendant Medtronic, Inc. has its corporate headquarters located at: 710 Medtronic Parkway, Minneapolis, Minnesota 55432-5604.

### **FACTS COMMON TO ALL CAUSES OF ACTION**

4. Plaintiff underwent a spinal fusion surgery on or about November 14, 2010; Defendant Quartararo performed the surgery.

5. Defendant Quartararo utilized Defendant Medtronics' product, the Infuse bone-graft device, to effectuate Plaintiff's spinal fusion surgery.

### **FIRST CAUSE OF ACTION**

#### **(Medical Malpractice as against Defendants New Jersey Spine Institute and Quartararo)**

6. Plaintiff hereby repeats and realleges all of the allegations set forth above as if set forth at length herein.

7. During the course of treating the Plaintiff, the Defendants negligently and carelessly failed to exercise ordinary care, failed to exercise that degree of skill, diligence and care commonly exercised by orthopedic surgeons, and medical professionals, in like circumstances giving due regard to the existing state of knowledge in medicine, failed to properly treat the Plaintiff, failed to apprise the Plaintiff of the risks to him in connection with the services rendered, failed to properly treat his condition and otherwise failed to act as prudent, skillful and careful orthopedic surgeon(s), in connection with the services provided to the Plaintiff.

8. As a direct and proximate result of the negligence and professional malpractice of the Defendants, as aforesaid, the Plaintiff sustained great pain and suffering of the mind and

body, has and did sustain permanent bodily injuries, has and did incur medical expenses in order to correct the conditions caused by the Defendants, has and was unable to attend to his ordinary routine, employment and affairs and was otherwise damaged.

**WHEREFORE**, Plaintiff demands judgment against the Defendants for money damages, together with interest, attorney's fees, costs of suit, and punitive damages.

### **SECOND CAUSE OF ACTION**

#### **(Negligence as proximate cause of incident/injury)**

9. Plaintiff repeats and reiterates every allegation contained in Paragraph(s) 1-8 of the Complaint and make them a part hereof as if set forth at length herein.

10. The incident, and Plaintiff's injuries and damages, were proximately caused by the negligence of the Defendants as herein alleged.

11. As a direct and proximate result of the aforesaid negligence of the Defendants, the Plaintiff was caused to sustain permanent and debilitating injuries as well as suffering consequential damages.

**WHEREFORE**, Plaintiff demands judgment against the Defendants for money damages, together with interest, attorney's fees, costs of suit, and punitive damages.

### **THIRD CAUSE OF ACTION**

#### **(Personal injury for future pain and disability)**

12. Plaintiff repeats and reiterates every allegation contained in Paragraph(s) 1-11 of the Complaint and make them a part hereof as if set forth at length herein.

13. As a further direct and proximate result of the Defendant's negligence, the Plaintiff has suffered, and will continue to suffer for an indefinite time, great pain, suffering, discomfort, disability, and inconvenience.

**WHEREFORE**, Plaintiff demands judgment against the Defendants for money damages, together with interest, attorney's fees, costs of suit, and punitive damages.

**FOURTH CAUSE OF ACTION**

**(Products liability against Defendant Medtronic, Inc.)**

14. Plaintiff repeats and reiterates every allegation contained in Paragraph(s) 1-13 of the Complaint and make them a part hereof as if set forth at length herein.

15. Defendants Medtronic, Inc., and/or XYZ, CORP., ABC, INC., and JOHN AND JANE DOES 1-25 (fictitious names), designed, manufactured, assembled, packaged, repaired, refurbished, reconditioned, marketed, sold or otherwise placed in the stream of commerce a certain product more particularly known as the Medtronic Infuse system for spinal bone grafts, utilized in spinal fusion surgery, hereinafter referred to as "product".

16. On or about November 14, 2010, Plaintiff began utilize the product after it was placed in Plaintiff's body by Defendant Quartararo; said product was designed, manufactured, assembled, packaged, repaired, refurbished, reconditioned, marketed, sold or otherwise placed in the stream of commerce by the Defendants Medtronic, Inc., and/or XYZ, CORP., ABC, INC., and JOHN AND JANE DOES 1-25 (fictitious names).

17. Defendants Medtronic, Inc., and/or XYZ, CORP., ABC, INC., and JOHN AND JANE DOES 1-25 (fictitious names) did so negligently and defectively design, manufacture, assemble, package, repair, refurbish, recondition, market, sell or otherwise place in the stream of commerce the aforesaid "product" causing the product to be in a dangerous and unsafe condition.

18. As a direct and proximate result of the negligence of the Defendants and/or the defect in the "product" designed, manufactured, assembled, packaged, repaired, refurbished, reconditioned, marketed, sold or otherwise placed in the stream of commerce by the Defendants, as aforesaid, Plaintiff was caused to sustain and did sustain serious and permanent personal

injuries requiring the care and treatment of physicians, hospitalization and medication and has been and will in the future continue to be hampered in his daily routine.

**WHEREFORE**, Plaintiff demands judgment against the Defendants for money damages, together with interest, attorney's fees, costs of suit, and punitive damages.

**JURY DEMAND**

Plaintiff demands trial by jury on all claims and issues so triable.

**THE MARCHESE LAW FIRM, LLC**

Attorneys for Plaintiff Norman Kornitzer

A handwritten signature in black ink, appearing to read "Daniel G.P. Marchese". The signature is written in a cursive, flowing style.

By: DANIEL G.P. MARCHESE, ESQ.

Dated: March 18, 2013